



# Security Council

Sixty-seventh year

*Provisional*

## 6855<sup>th</sup> meeting

Wednesday, 7 November 2012, 10.35 a.m.

New York

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*President:* Mr. Hardeep Singh Puri . . . . . (India)

*Members:*

Azerbaijan . . . . .	Mr. Musayev
China . . . . .	Mr. Wang Min
Colombia . . . . .	Mr. Osorio
France . . . . .	Mr. Briens
Germany . . . . .	Mr. Berger
Guatemala . . . . .	Mr. Rosenthal
Morocco . . . . .	Mr. Loulichki
Pakistan . . . . .	Mr. Masood Khan
Portugal . . . . .	Mr. Moraes Cabral
Russian Federation . . . . .	Mr. Karev
South Africa . . . . .	Mr. Mashabane
Togo . . . . .	Mr. M'Beou
United Kingdom of Great Britain and Northern Ireland . . . .	Mr. McKell
United States of America . . . . .	Mrs. DiCarlo

## Agenda

The situation in Libya

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*The meeting was called to order at 10.35 a.m.*

### **Adoption of the agenda**

*The agenda was adopted.*

### **The situation in Libya**

**The President:** Under rule 37 of the Council's provisional rules of procedure, I invite the representative of Libya to participate in this meeting.

Under rule 39 of the Council's provisional rules of procedure, I invite Ms. Fatou Bensouda, Prosecutor of the International Criminal Court, to participate in this meeting.

The Security Council will now begin its consideration of the item on its agenda.

I now give the floor to Ms. Bensouda.

**Ms. Bensouda:** I am honoured to present the fourth briefing on the activities of the Office of the Prosecutor in furtherance of resolution 1970 (2011). As this is my first opportunity to address the Security Council, allow me to express my gratitude for the Council's swift, unanimous action in referring the situation in Libya to the Office of the Prosecutor so as to ensure accountability for the most serious crimes. Last month's dialogue session, held under the Guatemalan presidency, on the relationship between the Council and the Court is yet another example of the Council's commitment to fostering understanding and enhancing relations between the two institutions. I stand ready to cooperatively work with the Council in our joint endeavours to promote international criminal justice and end impunity, in furtherance of our mutual quest for lasting peace.

The situation in Libya remains of serious concern to me and to my Office. The Council will recall that following its referral, and after the Office investigated and presented its evidence to the Chamber, on 27 June 2011, the Judges issued three arrest warrants for Muammar Al-Qadhafi, Saif Al-Islam Al-Qadhafi and Abdullah Al-Senussi. Libyan members of the National Transitional Council informed the Office in April that the warrants had played a crucial role in delegitimizing Al-Qadhafi, Saif Al-Islam and Al-Senussi, at a time when the opposition was struggling to draw attention to the commission of serious crimes in Libya. No investigations of these crimes could conceivably have been undertaken by the Al-Qadhafi regime, and

International Criminal Court (ICC) intervention was, at that time, the only way to establish justice for victims of the Gaddafi regime's crimes.

A lot has happened since the Council referred the situation to the ICC. Both Saif Al-Islam Al-Qadhafi and Abdullah Al-Senussi have been arrested and are in detention. The Libyan authorities have challenged the admissibility of the case against Saif Al-Qadhafi and have indicated their intent also to challenge the admissibility of the case against Al-Senussi in the near future. On 9 and 10 October, the judges of Pre-Trial Chamber I convened a hearing to receive oral submissions on the Government of Libya's admissibility challenge in relation to the case against Saif Al-Islam Al-Qadhafi. The Court heard from the Prosecution, the Defence and legal representatives, as well as the Libyan authorities, who asserted that they were investigating the same conduct as that investigated by my Office and that is now before the International Criminal Court. The Pre-Trial Chamber will decide in due course on the merits of the admissibility challenge as to whether the case should be heard before the International Criminal Court or in Libya. My Office appreciates the commitment of the Libyan authorities to respect the judicial process and will continue to engage with them within the limits prescribed by the Rome Statute.

It is worth recalling and emphasizing that the Rome Statute gives national institutions the primary responsibility to investigate and to prosecute such crimes, with the ICC intervening only if they are inactive or unwilling or unable to genuinely do so. Nonetheless, as the Appeals Chamber has previously upheld, a State challenging admissibility must provide the Court with evidence of a sufficient degree of specificity and probative value that demonstrates that it is indeed investigating a case.

Pursuant to its stated policy, my Office promotes and encourages genuine national proceedings to combat impunity for the most serious crimes of international concern. We await the Court's ruling on Libya's challenge. Should it ultimately succeed, my Office will monitor the proceedings and will cooperate with Libya, to the extent that my mandate permits, in order to ensure that they remain genuine. If, on the other hand, the Court rules that the case should be heard before the ICC, I will count on Libya's full support and cooperation to ensure that the proceedings of the Court are both successful and seen to be successful by the

Libyan public, who are the first and most important audience for any such proceedings at the ICC.

Let me also emphasize the ever-present need for complementary and mutually supportive approaches to addressing accountability generally, involving the full range of transitional justice mechanisms. In that regard, I encourage international support and assistance to enhance Libya's capacity to deal with past crimes and to promote the rule of law.

I wish to thank the Government of Libya for its commitment to working with the ICC and for its active engagement in the judicial process. I encourage the Government to redouble those efforts in the interests of justice. My Office appreciates the challenges inherent in the historic political transition under way in Libya. I believe that all sides would agree that justice must remain a key element of that transition.

Looking beyond the cases currently before the Court, there remains much that my Office and the Government of Libya can do together to make justice a reality for Libya's victims. I call on the international community, in particular the Council, to intensify its efforts to assist the Government of Libya in any way that it can in order to combat impunity and to reinforce a culture of the rule of law. I believe that, by working together, we can help to address the threats to Libya's security, both from within and from outside, that have been created by past and ongoing criminality. I also believe that we can show the Libyan people that the world is committed to assisting them in their efforts to secure justice and lasting peace.

My Office understands that the Government of Libya has committed to a comprehensive strategy to address all crimes and to end impunity in Libya. I encourage the Government of Libya to make that strategy public and to work with key partners to receive feedback on the strategy and to seek out the views and the concerns of victims in Libya. The early finalization of the strategy will be yet another milestone on Libya's path to democracy and the rule of law.

My Office takes note of Law 38, which grants amnesty at the national level for acts made necessary by the 17 February revolution, as well as Law 35, which purportedly ensures that any act found to be in contravention of international law and human rights covenants will not be exempt. I encourage the new Libyan Government, scheduled to be sworn in in the coming days, to ensure that there is no amnesty for

international crimes and no impunity for crimes, regardless of the perpetrator or the victim.

My Office continues to collect evidence in relation to a possible second case in Libya. No decision has yet been taken as to the focus of that second case. We continue to collect information on allegations of rape and sexual violence, which targeted both men and women; allegations against other members of the Al-Qadhafi Government for crimes committed during the events of 2011; and allegations of crimes committed by rebels or revolutionary forces, including against the residents of Tawergha, individuals hors de combat and detainees. I will take a decision on the direction of a possible second case in the near future.

My Office also continues to assess the security situation in terms of its potential impact on the Office's ongoing investigations. It appreciates the Government of Libya's commitment to ensuring the Office's security while it operates on the territory of Libya.

Given its limited resources and ever-increasing workload, my Office can only do so much to help Libya to move forward. The fate of the Libyan people is in their hands. I look forward to continuing dialogue with the Libyan Government and other key partners to ensure transparency in this essential and ongoing legal process.

**The President:** I thank Prosecutor Bensouda for her briefing.

I shall now give the floor to those members of the Council who wish to make statements.

**Mr. Osorio** (Colombia) (*spoke in Spanish*): Allow me at this Council meeting to reiterate my thanks and congratulations to Ambassador Rosenthal and to the entire delegation of Guatemala for having effectively executed the presidency of the Council last month in an outstanding manner. I would also like to congratulate you, Mr. President, and your entire delegation on your assumption of the presidency for this month. You can count on our full backing and support in carrying out your tasks.

I would like to thank Ms. Fatou Bensouda, Prosecutor of the International Criminal Court, for her fourth report on the implementation of the relevant section of resolution 1970 (2011) and for the additional information that she has provided us today. As this is her first time to address the Council, on behalf of my Government, I would like to welcome her and to

congratulate her on her appointment. I assure her that Colombia is fully ready to contribute to her work and to cooperate as far as we can in the successful fulfilment of her mandate.

The fourth report contains an update on the status of proceedings that originated from the Council's referral to the Court through resolution 1970 (2011). We appreciate the information about the investigations under way that could give rise to the opening of a second case related to gender crimes, as well as those relating to possible crimes committed by the rebel forces.

My delegation believes that a fundamental aspect at this stage is the actual implementation of the necessary cooperation with the International Criminal Court on the part of all of the actors involved, including States parties and non-parties to the Rome Statute, INTERPOL and the United Nations Commission of Inquiry.

We take particular note of the fact that with respect to the two legal proceedings under way for the crimes of murder and persecution for political reasons — the case against Saif Al-Islam Al-Qadhafi and the case against Abdullah Al-Senussi — the Government of Libya has expressed a clear willingness to cooperate with the Court. We feel that it is very positive that the country's authorities have made a commitment to moving forward with national proceedings that would satisfy the admissibility requirements of the Rome Statute.

However, a reading of the report clearly indicates that those good intentions have not been reflected in practical steps that would allow us to promote the necessary actions. Specifically, although the Prosecutor of the International Criminal Court has received authorization to move forward with investigations on the ground and to collect evidence that comes from spontaneous sources, the episode involving the unjustified detention of four Court officials last June shows that there is still much that remains to be done for the Government to deliver on their commitments.

Likewise, due to the difficulties we have seen in the formation of the new cabinet and in the timely appointment of competent authorities, including those appointed to liaise with the Court, the proceedings on the admissibility of the case against Saif Al-Islam Al-Qadhafi has not been able to move forward in a satisfactory manner. In particular, the judges involved in the process on admissibility still do not have all of the necessary information to conduct an appropriate

assessment of the circumstances in which the principle of complementarity could apply in this case. We must thus presume that for the same reasons the Libyan authorities have not yet been able to present a challenge to the admissibility of the case against Abdullah Al-Senussi, as was repeatedly announced.

It would seem therefore that the institutional weaknesses that have been mentioned have seriously affected Libya's interaction with the International Criminal Court, and that undermines the effective application of the Rome Statute and the relevant Council resolutions.

We believe that the international community, including the Court itself, must make an additional effort to provide assistance to the Libyan authorities so that they can acquire the technical and logistical ability that would enable them to move forward with the required investigations and proceedings. In the particular circumstances of Libya, we believe that the best way to ensure accountability and the end of impunity would be for the Libyan courts to be able to effectively carry out the respective trials, for which we believe there is the necessary political will.

For all the foregoing reasons, we are convinced that the unwavering support of the international community and the timely provision of technical assistance are increasingly important so that the Libyan authorities can stay on the adopted course. That should ensure that the serious crimes committed in Libya that have been condemned by the Security Council and global public opinion will not go unpunished.

**Mr. M'Beou (Togo)** (*spoke in French*): Allow me to begin, Mr. President, by congratulating you on your assumption of the presidency of the Security Council for the month of November. You can obviously count on the cooperation of our delegation. We also congratulate Ambassador Gert Rosenthal of Guatemala, who carried out his duties as President of the Council last month with distinction.

I would like to thank Ms. Fatou Bensouda, Prosecutor of the International Criminal Court (ICC), for her briefing, which provides information on the situation in Libya before the Court from the point of view of both cooperation and the principle of complementarity.

With respect to cooperation, Togo is pleased with the willingness of States parties and non-parties to the Rome Statute, as well as international and

non-governmental organizations, to help the ICC in the framework of its investigations of the alleged violations in Libya.

While appreciating the cooperation between Libya and the ICC, Togo hopes that the renewal of the mandate of the person in charge of liaising with the ICC will make possible full cooperation between the Office of the Prosecutor and the Libyan Government. My country believes that, in the spirit of the debate on 17 October on the relations between the Security Council and the ICC (see S/PV.6849), ways and means should be explored to find a solution that would promote the implementation of cooperation requests, pending or future.

We take note of the commitment, often repeated, of the Libyan Government to proceed to a fair and equitable trial for those responsible for alleged serious human rights violations and violations of humanitarian law, and we note that the Government affirms that the investigations that it has carried out have allowed it to obtain a great deal of evidence that will constitute a set of charges identical to what the ICC Prosecutor has presented. The Togolese Government hopes that appropriate arrangements will be made to guarantee that the alleged perpetrators of crimes will have an equitable trial in accordance with international standards.

Furthermore, Togo is concerned about the information it has received on acts of torture or other forms of mistreatment of the detainees and urges the Libyan Government to make every effort to put an end to it.

With respect to the principle of complementarity, Togo believes that the prosecution and trial of those responsible for the crimes in question is up to the Libyan authorities first and foremost. My country is convinced that there could not be any reconciliation or stabilization in Libya unless light is shed on the crimes in an equitable trial, so that the perpetrators can be held accountable for their actions both before the ICC and before national courts, in accordance with the principle of complementarity that is the very foundation of the ICC.

However, it would seem that for the time being the Libyan judicial system is still under construction. Of course, the expected decision of the Pre-Trial Chamber on the admissibility challenge in the Saif Al-Islam Al-Qadhafi case is not an assessment of the Libyan judicial system in general. But that decision, which will

deal with the determination of the Libyan authorities to deliver justice, could be an indicator as to the ability of the system itself to guarantee an equitable trial, ensuring, *inter alia*, everyone's right to a defence as well as the protection of witnesses. That is why we hope that cooperation between the Libyan authorities and the Office of the Prosecutor will make possible, in the final analysis, the judicious implementation of the principle of complementarity so as to guarantee an equitable trial for the detainees sought by the ICC.

**Mr. Karev** (Russian Federation) (*spoke in Russian*): First of all, Mr. President, I wish to congratulate you on your assumption of the presidency of the Security Council. We would like to tell you, Sir, that you can count on our full support. We also wish to thank the delegation of Guatemala for its successful leadership in October.

We thank Ms. Bensouda for her briefing and for the fourth report on the investigation of the situation in Libya pursuant to resolution 1970 (2011). We support the efforts of the International Criminal Court (ICC) to bring to justice those involved in committing serious crimes during the events in Libya. However, judging by the report, the work in that area has started to become bogged down recently.

We are of the view that instituting proceedings against people who have committed the most serious crimes under international law is undoubtedly a matter for the State in question. The jurisdiction of the International Criminal Court complements but does not replace national jurisdiction. In the case of Libya, specifically, it is becoming increasingly clear that the continuing effects of the crisis in that country are a serious obstacle on the path to achieving national justice. Attempts to impose alien models of State-development and State-building on Libyan society and to impose values that disregard local political and legal traditions and culture have resulted in a serious absence of stability and lack of viable Government institutions and of the rule of law in general.

The local revolutionary military leaders who seized power on the ground understand the rule of law each in their own way and, to put it mildly, extremely specifically. They have no wish to submit to the central authorities, which are simply not in a position to bring them under their control. A stark example of the inability of the official Libyan authorities to uphold the rule of law was the detention in June for almost a month in Zintan of a group of ICC officials, which is a matter

of serious concern to us. We seriously doubt that in such circumstances the country's authorities can ensure fair legal proceedings that meet high international standards in the case of Saif Al-Islam Al-Qadhafi and Abdullah Al-Senussi. Nor do we completely understand what prevented Libya from sending the ICC confirmation on the progress of the national investigation into those two individuals. We believe that the Prosecutor and Judges of the International Criminal Court should investigate this situation carefully.

We regret that during the past six months the ICC has also been unable to make any progress with the investigation of the alleged crimes committed by officials of the States that participated in the operations in Libya under NATO's leadership. We believe that it is important that the ICC continue to assess the information received through the United Nations International Commission of Inquiry on Libya from non-governmental humanitarian organizations and other channels.

We welcome the Prosecutor's information on the ongoing ICC consideration of additional materials that could serve as a basis for instituting new criminal proceedings within the framework of the Libyan dossier. We emphasize the importance of conducting an objective investigation into wrongful acts committed by any participants in the events in Libya. It has already been established that crimes were committed both by representatives of Muammar Al-Qadhafi's regime and by the rebels. We look forward with interest to the results of the Prosecutor's analysis of the actions of Al-Qadhafi's opponents, including those involved in the extra-judicial killing of the former Libyan leader.

**Mr. Wang Min** (China) (*spoke in Chinese*): I listened attentively to the briefing by Ms. Bensouda. The new Government of Libya has been established, signifying a new step in Libya's political transition process, which China welcomes. The formation of the new Government has paved the way for the general election next year. It is a positive indicator of the Libyan people's efforts to achieve stability, to proceed with national reconciliation and to undertake economic reconstruction.

China hopes that Libya's new Government can rally the entire nation and proceed actively with the political transition process, based on the road map and the timetable outlined for the transition, with the goal of achieving long-term stability and prosperity.

The international community should continue to assist Libya's new Government and its people in those efforts.

China's position on the International Criminal Court (ICC) remains unchanged. We hope that the relevant actions of the ICC, in accordance with the Security Council's resolutions, can play a constructive role in promoting Libya's transition and reconstruction processes.

**Mr. Mashabane** (South Africa): I would first like to congratulate you, Mr. President, on your assumption of the presidency of the Security Council for the month of November. I would also like to thank the Permanent Representative of Guatemala and his delegation for the manner in which they steered the work of the Council in October.

Allow me to begin by expressing a warm welcome to the Prosecutor of the International Criminal Court (ICC), Ms. Fatou Bensouda, to congratulate her on her assumption of her post and to thank her for her report and the statement she made this morning.

South Africa supported and sponsored resolution 1970 (2011), which referred the situation in Libya to the International Criminal Court, because we were concerned that crimes against civilians were being committed in the midst of the conflict in Libya and wanted to see that the perpetrators would be held accountable for their crimes. Our support for the referral was based on our belief that the fight against impunity and the promotion of justice are objectives that must be pursued in our collective efforts to find enduring peace. The referral was made in February 2011; the decision to initiate prosecutions was made within weeks of the referral. By June 2011 the Pre-Trial Chamber had issued arrest warrants against Muammar Al-Qadhafi, Saif Al-Islam Al-Qadhafi and Abdullah Al-Senussi. To date, however, actual justice remains elusive. Indeed, while there was a flurry of justice-related activities in the early days, it appears that the wheels of justice began to grind more slowly with the end of the conflict. For us, the need for justice does not end with the cessation of hostilities. If that were so, justice would not be an end in itself but only a means to an end.

We have taken note of the admissibility challenge initiated by Libya before the Court. South Africa, as a focal point on complementarity, encourages domestic prosecution as the first option for ensuring justice. In particular, as a court of last resort, the ICC should intervene only where a national system

is genuinely unable or unwilling to prosecute. In that context, we would be grateful if the Prosecutor could share with us what the general attitude of her Office is to the admissibility challenge initiated by Libya. Does the Office of the Prosecutor believe that the complementarity test has been met? Was the submission filed by the Office of the Prosecutor supportive of the admissibility challenge, or did it challenge the claims of inadmissibility? In her answers to those questions, we would be grateful, in the light of the inactivity test of the Court, if the Prosecutor could share whether, to her knowledge, prosecutions of Saif Al-Islam Al-Qadhafi have been initiated in Libya, particularly as concerns Law 38, to which she referred this morning.

My delegation has stressed, since the first report presented by the Prosecutor, that we should call for investigations by the Office of the Prosecutor to cover all criminal acts committed by all participants in the conflict. We have noted that the Office of the Prosecutor continues to analyse information relating to atrocities allegedly committed by the rebel forces, as outlined in, among other things, the report of the United Nations International Commission of Inquiry in Libya. We hope that the analysis will be speedily completed, and we applaud the Prosecutor's comments to the effect that a decision will be made in the near future.

**Mrs. DiCarlo** (United States of America): Allow me first to congratulate you, Mr. President, on your assumption of the presidency of the Council for this month, and to assure you of my delegation's full cooperation. I would also like to express sincere appreciation to Ambassador Rosenthal and the delegation of Guatemala for their excellent leadership of the Council last month.

I would also like to thank Ms. Bensouda for her briefing and to welcome her today as she provides her first report to the Council as Prosecutor of the International Criminal Court (ICC). The United States looks forward to continuing our active engagement with the Office of the Prosecutor and the ICC, consistent with our law and policy, in order to advance accountability for the most serious crimes of international concern.

The United States congratulates the Government and people of Libya on the positive steps they have taken to put in place a democratically elected leadership, including the recent formation of a new Cabinet. This is the first time an elected body in Libya has formed a Government, and we continue to support the Libyan

people as they work diligently to build a country that is representative of all its citizens and fully respects the rule of law. We look forward to working closely with the new Government, including Minister of Justice Margani.

As Libyans chart the country's future, justice and accountability issues will remain central to the success of Libya's transition and essential to securing lasting peace. In this context, we continue to urge Libya to adhere to its international obligations, including under resolution 1970 (2011), and to continue its cooperation with the ICC.

The cases involving Saif Al-Islam Al-Qadhafi and Abdullah Al-Senussi will unfold against the backdrop of Libya's transition to democracy. This is an important moment for both Libya and the ICC as they work together within their respective roles towards fostering and ensuring accountability during this historic transition.

We recall our comments last month at the Council debate on peace and justice and the role of the ICC (see S/PV.6849) that the Council's referral of situations to the ICC and subsequent developments highlight why we should consider ways to improve cooperation and communication between the Security Council and the Court. For example, the Council should continue to monitor the developments and situations it refers to the Court and the challenges that may be faced by ICC personnel in conducting their work. States should look for appropriate ways to ensure that Court staff are able to undertake their work safely and effectively.

Furthermore, we note the Prosecutor's statement that many requests for assistance to a variety of parties have yet to be fully executed. In resolution 1970 (2011), the Council decided that Libyan authorities shall cooperate fully with and provide the necessary assistance to the Court and Prosecutor, and also urged all other States and concerned organizations to cooperate fully. The United States has endeavoured to respond positively to informal requests for assistance in the Libya situation, consistent with our law and policy. We also remain deeply concerned by allegations of rape and sexual violence documented by the United Nations commission of inquiry and look forward to further reports by the Office of the Prosecutor about its efforts in this regard.

Regardless of the outcome of the admissibility proceedings before the ICC, Libya will need to bolster

domestic accountability structures and processes to create a robust and fair system of justice at home. After 40 years of dictatorship, no one has a better appreciation for the importance of due process and the rule of law in Libya than Libyans themselves. The new Government must work to combat impunity for perpetrators of serious crimes regardless, of their affiliation or the nature of their crimes; to ensure a comprehensive programme of transitional justice consistent with Libya's international human rights obligations; and to commit to measures aimed at assisting victims.

The United States stands ready to assist Libya as it works to reform its justice sector, strengthen the rule of law and advance human rights and international law. We look forward to working with the international community to ensure adequate support to Libya as it undertakes these critical tasks.

**Mr. Musayev** (Azerbaijan): Let me begin by congratulating you, Sir, on your assumption of the presidency of the Security Council this month, and by assuring you of our full support. I also congratulate Ambassador Rosenthal of Guatemala and his delegation on their excellent leadership of the work of the Council during the month of October.

I would like to thank Ms. Fatou Bensouda, Prosecutor of the International Criminal Court (ICC), for her briefing and for presenting the Court's fourth report to the Security Council pursuant to resolution 1970 (2011). I would also like to take this opportunity to congratulate Ms. Bensouda on her assumption of the position of Prosecutor of the International Criminal Court, and to wish her every success in fulfilling this highly responsible duty.

Azerbaijan is not a party to the Rome Statute of the International Criminal Court. Nevertheless, we proceed from the strong understanding that protecting civilians, upholding rights and insisting on international accountability all contribute to the maintenance of international peace and security and are thus responsibilities of the international community as a whole.

Libya is undergoing a fundamental transition to democratic statehood. It is clear that the efforts to restore peace, security and stability in Libya are not unchallenged. We commend the Libyan authorities for their engagement in the judicial process with the ICC and for permitting the conduct of investigative activities on their territory, in particular to collect evidence from

voluntary sources. We take positive note of the formal renewal by the Libyan General National Congress of the mandate of its focal point to the ICC.

We note that the Government of Libya is investigating the same cases as those selected by the Office of the Prosecutor of the ICC. The report of the Prosecutor clarifies that admissibility analysis should be based on an assessment of whether the national authorities have investigated or prosecuted or are investigating or prosecuting such cases generally. In this regard, we note that the Government of Libya has clearly expressed its commitment and desire to ensure an effective and genuine investigation and fair trials, consistent with the highest international standards.

We also commend the Libyan authorities for their continued efforts towards strengthening the rule and reforming the country's national judicial system. At the same time, it is obvious that the Government of Libya should continue cooperating with the ICC and provide it with all necessary information that might be needed by the Court's judges to properly assess the admissibility challenges.

We take note of the Prosecutor's update on the continued analysis of the information gathered to determine whether Rome Statute crimes occurred in relation to reported gender crimes and crimes allegedly committed by different parties in Libya since February 2011.

The Government of Libya has committed to a comprehensive strategy to address all crimes and end impunity in the country. The activation of the strategy will undoubtedly demonstrate that justice remains a key priority underpinning efforts to ensure peace and stability in Libya and reaffirming the rights of victims to seek resolution within the national legal system. We support the call made by the Prosecutor on the international community to step up its efforts to assist the Government of Libya in combating impunity and reinforcing a culture of the rule of law.

**Mr. Briens** (France) (*spoke in French*): I would like to take this opportunity to congratulate you, Sir, on your assumption of the presidency of the Security Council and to assure you of our full support. I join previous speakers in thanking Ambassador Rosenthal and his team for their work presiding over the Council last month.



I thank Ms. Fatou Bensouda for her report and her briefing today. The points that she made today reflect the situation in Libya well. As Ms. Bensouda noted, the country is in transition after 42 years of dictatorship. Pro-Al-Qadhafi militias remain active. Not all areas are under control. Tragic events, including the assassination of the United States Ambassador, have shaken the country. But the Libyan authorities have persistently reiterated their commitment to pursuing the democratization of the country, and the Council is committed to helping them. Libya has asked to try Saif Al-Islam Al-Qadhafi and Abdullah Al-Senussi itself. That is an option created by the Rome Statute. It is also a tribute to that post-conflict country that it has thus endeavoured to shoulder its responsibilities.

We are pleased that the Libyan Government has chosen to avail itself of its right to challenge the admissibility of the case before the International Criminal Court (ICC), in full conformity with the Statute. As the Prosecutor has reminded us, the final decision on the case of Saif Al-Islam Al-Qadhafi will end up before the judges of the ICC, whose decisions will have to be implemented. Libya's respect for its international obligations, in particular the provisions of resolution 1970 (2011), is a key indicator of its commitment to the rule of law. It serves as a lesson for other countries, such as the Sudan, that refuse to engage in judicial processes of the Court, contrary to Security Council decisions.

I will not comment further on the inadmissibility proceedings now being considered by the judges; the decision is up to them. But we have no doubt that Libya, in conformity with Council resolution 1970 (2011), will comply with their conclusion.

With respect to the persons detained by militias, the Prosecutor has noted atrocities committed against Tawergha civilians, who were targeted by violence in Misrata.

We welcome the Prosecutor's discussions with the Government on a global strategy to bring an end to crimes and impunity in Libya. That means that perpetrators must be prosecuted and must benefit from all of the guarantees of a fair trial.

The Prosecutor has also indicated that she will continue her inquiry into alleged crimes of sexual violence committed in Libya by Al-Qadhafi's forces between 15 February 2011 and the end of the conflict.

We commend the attention paid to the dignity of victims.

France was one of the sponsors of resolution 1970 (2011), which remains an example of the ability of the Council, and the international community as a whole, to act rapidly and in unity. In view of the atrocities committed by Libyan leaders, members of the League of Arab States, the African Union, the European Union and the Organization of the Islamic Conference all came together to condemn the atrocities.

Resolution 1970 (2011) referred the situation in Libya to the Prosecutor of the International Criminal Court and made up the heart of the process that unambiguously marked the total isolation of criminals regardless of rank. It enabled thousands of human lives to be saved.

Lessons must be drawn from our experience in Libya. First, given the atrocities committed, the international community and the Council can make use of an impartial, independent judicial institution that is permanent and immediately operational, in order to identify the main perpetrators of crimes.

After Libya's example, it has been noted that inaction is more than ever inexcusable. At a time when the Syrian authorities are perpetrating violence against civilians, the Council must reiterate its message on the primacy of the rule of law and the fight against impunity at every opportunity.

In order to be effective, we must regain our clarity. It is not the threat of the ICC that contributes to violence. It is the hope retained by criminals that they will avoid the hand of justice. Hesitation and silence on our part do not help to save lives.

The second lesson is that the International Criminal Court has demonstrated its ability to swiftly act in Libya. I wish to pay tribute to Ms. Bensouda, her predecessor, Mr. Moreno-Ocampo, and their teams, whose work has enabled us to understand the workings of the violence in Libya.

An examination of the arrest warrants on crimes against humanity shows descriptions of planned and systematic attacks against civilians and the methods used, including forced disappearance, arbitrary detention and torture, which were used to crush all forms of opposition. After the fact, the international community sometimes tends to forget history. The arrest warrants, which expose the orders that were

given to terrify and assassinate civilians, are there to prevent such rewriting of history.

The third lesson is that the Council must be more rigorous. It must improve its planning efforts as well as its cooperation with the ICC when it becomes so involved. That is also a lesson that my delegation would like to take away from the Council's open debate on its interaction with the ICC (see S/PV.6849), organized by the Guatemalan presidency. We must be able, perhaps by modifying the terms of reference of the Informal Working Group on International Tribunals and as part of the sanctions committees, to better manage questions of cooperation and non-cooperation.

The process initiated by resolution 1970 (2011) must run its course. The fight against impunity is crucial for a country such as Libya that has chosen the direction of the rule of law. That is what the Council has also underscored in resolutions 1973 (2011), 2009 (2011) and 2040 (2012). Continuing that process requires both Libya's full cooperation with the Office of the Prosecutor and the full support of the Council, the Secretariat and Mr. Tarek Mitri, Head of the United Nations Support Mission in Libya, in the efforts of the ICC.

**Mr. Masood Khan** (Pakistan): We congratulate you, Mr. President, and India, on your assumption of the presidency of the Council. We also thank Ambassador Rosenthal and his delegation for their able stewardship of the Council last month.

I would like to thank the Prosecutor of the International Criminal Court (ICC), Ms. Fatou Bensouda, for her briefing. We have taken note of the ICC Prosecutor's fourth report to the Security Council in relation to resolution 1970 (2011).

Pakistan is not a signatory to the Rome Statute, and thus is not a member of the International Criminal Court. However, we recognize the rights and obligations of the States members of the ICC.

The situation in Libya has evolved significantly since the last briefing to the Council by the ICC Prosecutor (see S/PV.6772).

We congratulate the Libyan people on the elections and the formation of a new Government. That marks an important step towards the recovery and rehabilitation of the country from the conflict of the past year.

Libya continues to face some daunting challenges. We are confident that the new elected Government, with the broad support of the people, will be able to overcome those challenges.

The Government needs to forge consensus for a national security architecture, to disarm and reintegrate the revolutionary brigades, to deal with cases of conflict-related detainees and to contain the adverse impact of weapons proliferation.

The path ahead for Libya is reconciliation, not retribution or revenge. The international community must continue to extend all possible assistance in that regard.

The Libyan people have expressed their intent to try Saif Al-Islam Al-Qadhafi and Abdullah Al-Senussi before Libyan courts. We hope that the request of the Libyan authorities to try those individuals will be considered positively, in accordance with the complementary nature of the Court's jurisdiction.

Pending a decision on the admissibility challenge, investigations by the Office of the Prosecutor in the case of Saif Al-Islam Al-Qadhafi remain suspended. Libya is undergoing a transition phase, and its Government may need time to submit the necessary information.

We appreciate the engagement of the Libyan Government in the judicial process of the ICC. Sharing information about its legal system with the Court would strengthen its own position on the admissibility challenge. The Government must also ensure that the trials of those individuals, if they are conducted in Libya, be in accordance with due process and Libya's international obligations.

The Office of the Prosecutor has made some progress in investigating other alleged crimes committed in Libya. In that context, we underline the importance of conducting thorough and impartial investigations, regardless of which side perpetrated the crimes.

The ICC is a court of last resort. Strengthening the judicial system at the national level is a better and more sustainable way to end impunity. Formulating a comprehensive justice strategy to address the crimes that occurred in Libya would underpin efforts to ensure peace and stability in the country. At the same time, healing wounds, fostering national unity and ensuring social and political stability are important imperatives.

In conclusion, we underscore Pakistan's fullest support for the well-being and prosperity of the people of Libya.

**Mr. Rosenthal** (Guatemala) (*spoke in Spanish*): We thank you, Mr. President, for having convened this important briefing, and we welcome the Prosecutor of the International Criminal Court (ICC), Ms. Fatou Bensouda, to the Council. We are grateful for the presentation of the fourth report to the Security Council, in accordance with resolution 1970 (2011), as well as for the additional information shared with us today.

In the context of Libya's complex transitional process, we welcome the progress made by the Office of the Prosecutor in the cases against Saif Al-Islam Al-Qadhafi and Abdullah Al-Senussi. We trust that, as the transitional process advances, stronger institutions will develop that will allow Libya to forge a State that guarantees human rights, the rule of law and the end of impunity. We therefore believe that it is extremely important to maintain our cooperation with the International Criminal Court and the Office of the Prosecutor. It is crucial that those entities receive the necessary support and assistance from all States, including those that are still not party to the Rome Statute.

Similarly, we believe that the Libyan authorities have an obligation to respect the work of the Court and the Office of the Prosecutor. To that end, we must ensure that they will be able to work without hindrance or restriction. Those assurances are all the more important given the incident involving several Court officials who were detained by the Libyan authorities while on an official mission.

We appreciate the work done thus far by the Office of the Prosecutor of the Court, but we also see the involvement of the Libyan authorities in the process and their interest in it as a positive sign. We eagerly await the decision that the Court will take on the challenge presented by the Government of Libya on the admissibility of the case against Saif Al-Islam Al-Qadhafi. We believe that this situation will make it possible to determine the impartiality, independence and capacity of the Libyan judicial system to respond to those challenges. In any case, whatever the ultimate decision of the Court will be on the admissibility of this case, we agree with Ms. Bensouda that the Office of the Prosecutor must remain informed on all the steps and decisions that are taken on that matter.

As for the investigations on other crimes committed in Libya, we believe it important for the investigations of human rights violations and crimes against humanity in Libya, regardless of their perpetrators, to continue. We are extremely concerned by the gender crimes that took place during the conflict, and we hope that the investigations of those crimes can help to deliver justice to the victims of such serious offenses.

Lastly, and as expressed by our Minister for Foreign Affairs in the open debate on 17 October under the Guatemalan presidency of the Security Council (see S/PV.6849), we reiterate our support for and commitment to the International Criminal Court and the Office of the Prosecutor. We believe that it is necessary to take the necessary measures and to step up international cooperation in order to bring an end to impunity and to ensure that those responsible for atrocious crimes be brought to justice. We believe that cooperation is key if the Council is to be able to support its own decisions and to provide a follow-up to its referrals to the Court.

**Mr. Loulichki** (Morocco) (*spoke in Arabic*): I would like to make a brief but sincere statement expressing our appreciation and congratulations to you, Mr. President, on your assumption of the presidency of the Council this month, and to wish you every success in the implementation of the Council's intensive programme of work. We address the same sincere words to Ambassador Gert Rosenthal and his team for the able manner in which they conducted our work last month. Finally, I would like to thank Ms. Fatou Bensouda for her clear and comprehensive briefing on developments in the implementation of resolution 1970 (2011).

I would like to express our sincere pleasure in seeing the brotherly Libyan people take one step after another on the road to establishing modern, democratic, independent and credible Libyan institutions. Multilateral and transparent elections have taken place in Libya after 40 years of tyranny. A Government has been established that enjoys the confidence and trust of the people and that is leading the Libyan people once again to establish a democratic State that meets the aspirations of all its citizens.

While we stress our full support for and readiness to cooperate with the new Government in the implementation of its urgent tasks in extremely fragile security conditions, we appeal to the international community, represented by the Council, and to the

United Nations Support Mission in Libya to provide the necessary assistance to that new Government so that it may be able to meet the challenges facing it, particularly with regard to problems of security, arms, border control, the integration of fighters, displaced persons and refugees, and the creation of a system capable of establishing peace, stability, national reconciliation and human rights.

The new Libyan authorities, beginning with the National Transitional Council and the General National Congress, have repeatedly reiterated their readiness to work and cooperate with the International Criminal Court (ICC) to establish justice for the victims of atrocious crimes, as reflected in the report of the Prosecutor on the implementation of resolution 1970 (2011). The scope of that cooperation has widened through the investigation missions that have visited Libya, the encounters between the ICC Prosecutor and high-level Libyan officials, and the coordination between the two parties in dealing with the ICC officials who were arrested by a brigade in Zintan.

Libya has formally expressed its intention to address attacks against Libyan nationals without distinction. It has also become involved in launching justice reform by enacting laws that guarantee the independence of the judiciary, the formation of a national reconciliation commission and fact-finding inquiry, and transitional justice.

Libya is also endeavouring to focus its investigations on high-level officials accused by the independent International Commission of Inquiry and has laid the foundations of a general plan to establish transitional justice, national reconciliation and civil peace.

With regard to the trial of Saif Al-Islam Al-Qadhafi and other members of the Al-Qadhafi regime, the Libyan authorities have reiterated that the Libyan judiciary is capable of conducting fair and just trials of those accused, in accordance with international criteria, guaranteeing the accused their right to self-defence and enabling the Libyan people to find the truth and deal with their painful past. The request of the Libyan authorities to conduct national trials of Saif Al-Islam Al-Qadhafi and others, and its commitment to ensuring that these trials will be serious and effective, reassure us that no one in Libya who has committed violations of human rights or atrocities will be able to enjoy impunity. This has been the position of the Security Council in granting Libya the right to conduct its own

trials of Saif Al-Islam Al-Qadhafi in accordance with international judicial standards and the statute of the International Criminal Court.

The conduct of the trials by the Libyan national authorities is necessary for the following substantive reasons. First, the Libyan judiciary respects international judicial standards and the basic tenets of human rights and fundamental freedoms. Secondly, it is capable of trying people for crimes against humanity and violations of human rights in a manner that ensures justice, fairness and victims' rights. Thirdly, it is capable of trying other crimes and establishing all necessary measures to prevent impunity or the commission of such crimes in the future. Fourthly, it is capable of doing the work necessary to achieving national reconciliation in Libya so that it can overcome the painful past and lay the foundations of a new State.

The Libyan people are now more determined than ever to establish a democratic State that respects the rule of law and is capable of rejoining the international community and the Council in applying the highest standards of justice and fairness in order to meet the aspirations of all factions of the Libyan population for the security, stability and prosperity of the region.

In conclusion, I would like to express our readiness to cooperate with our brothers in the new Libya and to share with them our experience in the field of judicial institutions, transitional justice, dealing with the past and achieving national reconciliation so as to enable it to remain an effective member of the Maghreb region and to face the challenges of secession and terrorism that threaten the Sahara and the Sahel region.

**Mr. Moraes Cabral** (Portugal): Let me first congratulate you, Sir, on your assumption of the presidency of the Council. We wish you every success, and you know that you can count on our full support. Allow me also to reiterate our thanks and appreciation to Ambassador Rosenthal and his team for their able stewardship of the Council last month.

I thank the Prosecutor of the International Criminal Court (ICC), Ms. Bensouda, for her report and comprehensive briefing. We fully share the objectives she stated and the proposed method to pursue. I would also like to commend her for the work under way to investigate all facts and evidence relevant to assessing criminal responsibility under the Rome Statute following the referral of the situation in Libya to the ICC. In this regard, we encourage close cooperation between

the Prosecutor's office and the Office of the United Nations High Commissioner for Human Rights in all that concerns the work of the independent international commission of inquiry, as well as the further support that can be provided to ensure the effectiveness of the investigations by the Prosecutor.

We also welcome the contacts that the Office of the Prosecutor continues to hold with the Libyan Government and the continuing efforts to ensure that a good level of cooperation is preserved. We will follow very closely the consideration that is being given by the Court to the reported incidents in Libya with Court employees, including with the aim of preventing incidents such as these from occurring in the future. It is indeed crucial that those in the Court who are involved in the investigations in the field are able to do their work effectively and in appropriate conditions.

Portugal stresses the importance of accountability and the need to fight impunity for serious violations of human rights. These are universal goals that guide the United Nations and are at the core of the international community's concerns. We thank the Prosecutor for her update on the ongoing cases.

We will closely follow future developments on these procedures, bearing in mind the important role the Statute confers on the Court in deciding the admissibility of the case against Saif Al-Islam Al-Qadhafi following the procedural challenge filed by the Libyan Government. We fully trust the Court in its evaluation of the situation with a view to ensuring the trial is undertaken in full compliance with international standards. Likewise, we have similar expectations concerning the case against Abdullah Al-Senussi and the need for his prompt presentation to justice.

We also thank Ms. Bensouda for the information provided on ongoing investigations, including on gender crimes and the pattern of rapes identified in the report of the commission of inquiry, and we stress in this respect the concern of the Office for ensuring, in its investigative efforts, the protection of victims, thus preventing situations in which victims could be further victimized through exposure and possible retaliation.

Violations of human rights and international humanitarian law are precisely that — violations and crimes — regardless of whoever may be found responsible for them. Acts of retaliation, such as those against civilians mentioned in the report, are inadmissible. Let me once again stress that every

person has the right to a fair trial. Cases of arbitrary arrest and enforced disappearances must stop and be accounted for, and we welcome the continuing efforts of the Prosecutor to address these important issues.

In conclusion, we look forward to a full and complete investigation of allegations of all serious crimes committed in Libya, and encourage the Prosecutor and her Office to continue their investigative efforts in cooperation with the Libyan authorities. We also stress, as the Prosecutor does in her report, the need for a comprehensive strategy on the part of Libya to address these crimes. What is important is to ensure that justice is done, that no impunity is condoned, and that those responsible for such serious crimes are brought to justice and given a fair trial.

**Mr. Berger** (Germany): I would like to thank the Prosecutor for presenting her report. Since this is the first time that Ms. Bensouda has briefed the Council, please allow me to congratulate her on the assumption of the post of Chief Prosecutor of the International Criminal Court (ICC). We are convinced that the Office of the Prosecutor is in good hands, and we wish her every success.

We commend Libya on the progress achieved during the first year of liberation from the Al-Qadhafi dictatorship. The recent approval of the new Cabinet of Prime Minister Zeidan in the first elections for decades is an important step in the transition process. No one expected this transition to be easy and without challenges after decades of systematic destruction of political institutions by the former regime. The Prime Minister and his Government should therefore receive all the support they need, and we look forward to working closely with them.

Let me now turn to the points that were raised by the Prosecutor. I would like to address four issues.

First, on cooperation, we fully support the Prosecutor's call on all concerned to fully cooperate with the ICC and thereby contribute to the implementation of resolution 1970 (2011). We are mindful that the resolution explicitly demands full cooperation with the ICC from the Libyan authorities. We therefore encourage Libya to meet its obligations without preconditions or restrictions. In that context, we appreciate the renewal of the mandate of the Libyan focal point to the ICC on 11 September.

Secondly, with regard to the admissibility challenge presented by Libya in the case of Saif Al-Islam Al-Qadhafi, Germany reiterates its view that the ultimate decision on the matter is to be made by the ICC Pre-Trial Chamber. It is in the interest of all to establish clarity on the issue of jurisdiction as soon as possible. We therefore urge the Libyan authorities to swiftly supply the Pre-Trial Chamber with copies of the evidence that was presented orally during the public hearing held on 9 and 10 October. We expect all concerned to fully accept and implement the forthcoming decision by the ICC.

Thirdly, on the more general point of how potential future referrals by the Council should be worded, Germany regrets that, despite a clear legal obligation to allow for the full application of the Rome Statute to all activities undertaken by the ICC and its staff under the Statute, some staff members of the ICC were detained in Libya in June. We are therefore of the view that future referrals should explicitly highlight the privileges and immunities enjoyed by ICC staff.

Fourthly, Germany remains very concerned about reports, including by the Independent International Commission of Inquiry, regarding gender-related crimes that were committed in Libya. We fully share the view of the Prosecutor that such crimes may well fall under the Rome Statute and that the ICC therefore has the full authority to investigate and, if needed, to prosecute the perpetrators of those heinous crimes.

Finally, I wish to reiterate Germany's readiness to support ongoing investigations following requests for cooperation.

**Mr. McKell** (United Kingdom): Let me thank the Prosecutor for her report on the situation in Libya. It is just over one year since the end of the conflict in Libya and the declaration of liberation from the misrule of the Al-Qadhafi regime. Despite recent security challenges, the political transition in Libya is continuing and the country is fast getting back on its feet.

After 42 years, the fundamental building blocks for Libya's successful political transition are continuing to develop. Libyan Prime Minister Ali Zeidan has appointed his new Government, including a new Minister of Justice. Civil society is flourishing and the economy is restarting. The 2012 budget projects a surplus, the stock market has reopened and oil production is back to near-pre-conflict levels. The international community continues to play a role to

support the political transition, providing technical assistance to meet Libya's needs.

The General National Congress and the recently appointed Libyan Government are leading the process of building a new peaceful and prosperous Libya. In his address to the General Assembly last month, the new President of the Libyan General National Congress reiterated the determination of the Libyan people to ensure that human rights are respected (see A/67/PV.13). We urge the Libyan authorities to ensure that they meet those public commitments. In that regard, we welcome the close cooperation with the Human Rights Council's Commission of Inquiry, which has now completed its work. The Libyan Government should investigate and hold to account all those guilty of abuses, and press forward with the implementation of the Commission's recommendations.

Addressing security and transitional justice is the immediate challenge for the Libyan Government. We stand ready to assist the Libyan Government in building up accountable and transparent security and justice institutions to improve security and address outstanding issues.

The United Kingdom is a strong supporter of the International Criminal Court. We note the detailed work of the Prosecutor and her Office during visits to Libya over the past year, and we thank her and her staff. Their efforts have played an important part in challenging impunity and bringing accountability to a country where it has been sadly lacking for some time. The United Kingdom fully supports the ICC's investigations into crimes against humanity, including those involving sexual violence. We believe that there is more that can and must be done to combat the issue, particularly to address the culture of impunity for such crimes that has been allowed to develop. We are exploring options to support the development of capacity within Libya to address the issue, as part of the Foreign Secretary's initiative to prevent sexual violence.

Libya's continuing cooperation with the ICC in relation to the arrest warrant issued against Saif Al-Islam Al-Qadhafi for suspected crimes against humanity is essential. We note that the Libyan authorities have submitted an admissibility challenge setting out the ongoing Libyan investigations into his alleged crimes and that the Prosecutor and her Office have suspended their investigations pending a ruling from the ICC judges on the case. We encourage the ICC

and the Libyan Government to work together to address matters arising out of the events in June. But, generally, we are pleased that Libya and the ICC are continuing to engage constructively on issues relating to the ICC proceedings. It is important that the detention of both Abdullah Al-Senussi and Saif Al-Islam Al-Qadhafi be in accordance with international law, that they have access to legal advisers and that any potential trial held in Libya be consistent with Libya's international human rights obligations.

The authorities of the United Kingdom have played a part in the ICC investigations so far by providing the fullest support as and when requested to the Prosecutor and her team of investigators. We will continue to do so.

**The President:** I shall now make a statement in my capacity as representative of India.

I too would like to join others in thanking the Prosecutor, Ms. Fatou Bensouda, for her briefing today. Let me state at the outset that India is not party to the Rome Statute, for reasons that are well known and need not be reiterated here. However, we support the rights and obligations of the States that are members of the International Criminal Court (ICC).

India strongly condemns all acts of violence committed against civilians. We believe that the right to life is one of the fundamental rights and should be the foundation of any social order. It is the obligation of all States to take appropriate measures to protect the lives of their citizens while maintaining social order. The States concerned must also bring to justice those responsible for violations of that right. During the conflict in Libya there were deaths and destruction on a massive scale committed by parties to the conflict.

In the post-conflict scenario the proliferation of weapons has emerged as a major problem, posing a threat to stability in Libya and in the larger region. The Libyan Government has to confront that challenge by undertaking an inclusive political process aimed at achieving national reconciliation, peace, security and stability in the country. In that connection, we welcome the progress achieved towards establishing democracy in Libya, and we commend the people and Government of Libya for holding elections to the National Congress. We hope that peace, stability and socioeconomic development will soon return to Libya.

The international community, including the Security Council and the ICC, should fully assist the Libyan authorities in that process. Such an inclusive approach to national reconciliation, anchored in State sovereignty, is the only way to overcome the problems that Libya is currently facing. We have noted the Prosecutor's comments today, and we expect that she will carry out a thorough and impartial investigation of the situation in Libya in an impartial and transparent manner. The Council referred the situation in resolution 1970 (2011), and a report on the investigation of the situation is important. All those responsible for committing crimes should be held accountable. Political or other non-judicial considerations should not exempt anyone from prosecution for crimes committed.

Last but not least, it is also important to ensure that all actions by the ICC Prosecutor fall strictly within the ambit of resolution 1970 (2011), particularly its paragraph 6, which concerns the States that are not parties to the Rome Statute.

I now resume my functions as President of the Council.

I give the floor to the representative of Libya.

**Mr. Dabbashi** (Libya) (*spoke in Arabic*): I should like at the outset to congratulate you, Sir, on your assumption of the presidency of the Security Council for this month. I should like also to commend your predecessor, the representative of Guatemala, and the members of his team for their outstanding work last month. Let me also thank Ms. Fatou Bensouda, Prosecutor of the International Criminal Court (ICC), for the information that she has provided to the Council. I should like to congratulate her on her assumption of her important post and wish her every success in discharging her mandate.

The Libyan delegation explained to the Council, on 16 May 2012 (see S/PV.6772), the Libyan Government's plans to deal with the different aspects of the implementation of the judicial system and the restoration of peace and stability to the country, as well as the upcoming trials, which will be a top priority for us. We will deal with every case irrespective of the identity of the victim or the accused.

I should like to reiterate that those plans are still valid. As we have already underscored, the Libyan judicial authorities will initially focus their investigations and trials on the leaders and high

officials of the Al-Qadhafi regime, as they are the main perpetrators of the serious crimes committed, given that they were the ones who ordered or orchestrated them. Those leaders include Saif Al-Qadhafi, Abdullah Al-Senussi, Al-Baghdadi Al-Mahmoudi and Abuzed Dorda, all of whom are in detention in Libya. Some of them have already been interrogated at length, and progress has been made in that respect. The trial of Saif Al-Qadhafi was due to start, but, because of the investigation into his actions, it was postponed so as to enable the Libyan judicial authorities to give full consideration to his case.

Other leaders of the old regime fall into that same category, but they are currently outside the country. In that regard, the Libyan judicial authorities are seeking to persuade the States where they are located to arrest them and deliver them to the Libyan authorities, so that they can be put on trial. We hope that the States concerned will cooperate with us and that those same States will understand that it is incumbent upon them to comply with Libya's request, in line with paragraph 3 of resolution 2040 (2012), which "urges all Member States to cooperate closely with the Libyan authorities in their efforts to end impunity for such violations".

I should like to take this opportunity to underscore the fact that the Libyan Government is under considerable pressure by the country's people to cease all cooperation with certain States until they hand over those leaders of the Al-Qadhafi regime who are on their territory. The Libyan Government believes that it will have to do so if the extraditions are not carried out.

We believe that the close cooperation that exists between the ICC and the political and judicial authorities in Libya is of pivotal importance. That cooperation has, incidentally, just been underscored by the Prosecutor in her report and in her briefing. The Libyan judicial authorities are awaiting a positive decision by the Pre-trial Chamber judges pertaining to the admissibility challenge submitted by the Libyan Government in the case of Saif Al-Islam Al-Qadhafi. The Libyan judicial authorities also intend in the coming days to submit an admissibility challenge in the case of Abdullah Al-Senussi.

We would like to reaffirm here the determination of the Libyan authorities to guarantee the protection of the rights of the accused and to respect the necessary legal procedures while ensuring that the trials are carried out in conformity with international law and criteria.

The Libyan authorities have taken note of some criticisms made by human rights organizations. We have also listened to the comments from the members of the Council. In any case, the Libyan authorities are not neglecting any allegation pertaining to human rights violations, irrespective of who the perpetrators may be. The Libyan authorities are firmly determined to establish the rule of law and create a comprehensive, fair and effective judicial system. To that end, the Libyan authorities have drafted a comprehensive strategy to ensure the end of impunity and to achieve national reconciliation. However, the implementation of that strategy is facing numerous challenges.

There is also a delay in the formation of the new Government following the election of the National Congress. The Libyan authorities are also aware of the fact that there are on occasion inadmissible delays in the trials of detainees. However, the delays of which we are accused are due to the situation regarding the reform of the judicial system and security reforms and to our desire to expand the rule of law throughout all of our territory.

I am certain that members understand the scale of the challenges facing us and the range of complex and interrelated problems that the Libyan Government is encountering. Those issues require wise and cautious solutions that take all the various aspects into account and that seek to improve the security situation, to achieve justice, to build State institutions, to provide essential services, to relaunch the economy and to meet the citizens' needs.

Certainly, the Libyan Government vitally needs the understanding and assistance of the Council and of the international community, as well as international aid, in order to achieve those goals. I am glad to note today the willingness of all States to provide assistance to Libya at this difficult time.

**The President:** I now give the floor to Prosecutor Bensouda to respond to the comments and questions raised.

**Ms. Bensouda:** I thank you, Mr. President, for this second opportunity. I would also like to take the opportunity to thank members of the Council for their support in this process.

There was a specific question raised by the representative of South Africa regarding the process that is currently ongoing at the International Criminal



Court, namely, the challenge of admissibility by Libya. I can only say here that the judges will decide that. I believe that many members have already commented on the matter. Of course, it is not my place to prejudge the judges' decision.

However, I can say that my Office finds it positive that the Government of Libya is engaging in the judicial process. I think that that is very positive. As a policy, my Office has always encouraged and supported national proceedings. The test set by the Court is clear. The Court requires evidence of a sufficient degree of specificity and probative value to demonstrate that

Libya is indeed investigating the case. I believe that Libya is aware of its obligations. The burden of proof of course remains with the Government of Libya.

The process in which we are engaged is ongoing. I believe that the dialogue between the Court and the Government of Libya will also be ongoing.

**The President:** There being no more names inscribed on the list of speakers, the Security Council has thus concluded the present stage of its consideration of the item on its agenda.

*The meeting rose at 12.15 p.m.*